

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR-4372-N-01]

Statutorily Mandated Designation of Qualified Census Tracts for Section 42 of the Internal Revenue Code of 1986; Supplemental Designation

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document provides revised and supplemental designations of "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986, and provides the methodology used by the United States Department of Housing and Urban Development ("HUD"). The new Qualified Census Tract designations are for Puerto Rico and for the metropolitan areas and the nonmetropolitan areas of States affected by changes in metropolitan area definitions since the last designation of Qualified Census Tracts on May 1, 1995 (60 FR 21246). The designations are based on 1990 census data. *For the metropolitan areas and the nonmetropolitan areas of States not listed in this Notice, the corrected designations of "Qualified Census Tracts" published May 1, 1995 (60 FR 21246) remain in effect.* These revisions are made necessary by: the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997, which incorporate section 42 Qualified Census Tracts by reference; the need for Qualified Census Tract designations in Puerto Rico; and changes in the definitions of metropolitan areas since the last designation of Qualified Census Tracts.

FOR FURTHER INFORMATION CONTACT: With questions on how tracts are designated and on geographic definitions, Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-0426, e-mail Kurt_G_Usowski@hud.gov. With specific legal questions pertaining to section 42 and this notice, Chris Wilson, Attorney, Office of the Chief Counsel, Pass Throughs and Special Industries Branch 5, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, DC, 20244, telephone (202) 622-3040, fax (202) 622-4779; or Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-3260, e-mail H_JERRY_GROSS@hud.gov. For questions about the "HUBZones" program, Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416, telephone (202) 205-6731, fax (202) 205-7324, e-mail michael.mchale@sba.gov. A telecommunications device for deaf persons (TDD) is available at (202) 708-9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUDUSER at (800) 245-2691 for a small fee to cover duplication and mailing costs.

COPIES AVAILABLE ELECTRONICALLY: This notice is available electronically on the Internet (World Wide Web) at <http://www.huduser.org/> under the heading "Data Available from HUDUser." A complete revised list of all Qualified Census Tracts including the tracts designated by this Notice and the previously-designated tracts which continue to be in effect will be posted at

this site.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Treasury Department and the Internal Revenue Service thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code, as enacted by the Tax Reform Act of 1986 [Pub. L. 99-514], as amended by the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100-647], as amended by the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101-239], as amended by the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508], as amended by the Tax Extension Act of 1991 [Pub. L. 102-227], and as amended and made permanent by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66]. The Secretary of HUD is required to designate Qualified Census Tracts and Difficult Development Areas by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each state is allocated credit based on \$1.25 per resident. Also, states may carry forward unused or returned credit for one year; if not used by then, credit goes into a national pool to be allocated to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low income housing building owners applying for the credit.

The credit is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20% of units must be rent-restricted and occupied by tenants with incomes no higher than 50% of the Area Median Gross Income ("AMGI"), or 40% of units must be rent restricted and occupied by tenants with incomes no higher than 60% of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30% of the tenant's imputed income limitation (i.e., 50% or 60% of AMGI). The rental restrictions remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized or financed with tax-exempt bonds, or (2) 30 percent of the qualified basis for the acquisition of

existing projects or projects involving federal subsidies or financing with tax-exempt bonds. The actual credit rates were fixed at 9 percent (70 percent present value) and 4 percent (30 percent present value) for 1987, and are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of \$25,000. This equals \$9,900 at the 39.6% maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or professional service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also use the losses from the project.

The qualified basis represents a fraction of the "eligible basis," based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space in the building. The eligible basis is the adjusted basis attributable to acquisition cost plus the amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis is increased to 130% of what it would otherwise be. This means that the available credit will also be increased by 30%; if the 70% credit is available, it will effectively be increased to 91%.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50% of households have an income less than 60% of the AMGI. There is a limit on the amount of Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20% of the total population of the MSA/PMSA. For purposes of this rule, all non-metropolitan areas in a state are treated as if they constituted a single metropolitan area. An amendment to section 42 made by section 11701(a)(2) of the Omnibus Budget Reconciliation Act of 1990 specifies that the income test for designation of Qualified Census Tracts should be based on the most recent census data.

In the last designation of Qualified Census Tracts published May 1, 1995 (60 FR 21246), no tract designations were made in Puerto Rico because the entire island was designated a "Difficult Development Area" under section 42 of the Internal Revenue Code making the designation of Qualified Census Tract superfluous. Because the current designation of section 42 Difficult Development Areas, published October 21, 1997 (62 FR 54732), no longer names all of Puerto Rico a Difficult Development Area, updated designations of Qualified Census Tracts are required. The following changes in MSA/PMSA definitions were made after HUD's last designation of Qualified Census Tracts.

<u>New MSA (MSA Number)</u>	<u>Component Counties</u>
Flagstaff, AZ-UT MSA (2620)	Coconino County, AZ Kane County, UT
Grand Junction, CO MSA (2995)	Mesa County, CO
Hattiesburg, MS MSA (3285)	Forrest County, MS Lamar County, MS
Jonesboro, AR MSA (3700)	Craighead County, AR
Pocatello, ID MSA (6340)	Bannock County, ID

In addition, Chester County, Tennessee was added to the Jackson, TN MSA (3580). With this addition, the MSA now comprises Chester and Madison Counties, Tennessee.

Finally, the recently enacted “HUBZones” provisions of the Small Business Reauthorization Act of 1997 [Pub. L. 105-135] incorporate section 42 Qualified Census Tracts by reference making necessary these revisions to ensure legal compliance with this new program.

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this revised list of LIHTC Qualified Census Tracts, HUD used 1990 Census data and the MSA/PMSA definitions established by the Office of Management and Budget that applied as of June 30, 1996. Beginning with the 1990 census, tract-level data are available for the entire country. Generally, in metropolitan areas these geographic divisions are called census tracts while in most non-metropolitan areas the equivalent nomenclature is Block Numbering Area (“BNA”). BNAs are treated as census tracts for the purposes of this Notice.

The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50% of its households with incomes below 60% of the AMGI to be eligible. HUD has defined 60% of AMGI income as 120% of HUD's Very Low Income Limits, that are based on 50% of area median family income, adjusted for high cost and low income areas. The 1994 income estimates were then deflated to 1989 dollars, so they would match the 1990 Census income data.
2. For each census tract, the percentage of households below the 60% income standard was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.
3. Qualified Census Tracts are those in which 50% or more of the households are income eligible and the population of all census tracts that satisfy this criterion does not exceed 20% of the total population of the respective area.

4. In areas where more than 20% of the population qualifies, census tracts are ordered from the highest percentage of eligible households to the lowest. Starting with the highest percentage, census tracts are included until the 20% limit is exceeded. If a census tract is excluded because it raises the percentage above 20%, then subsequent census tracts are considered to determine if a census tract with a smaller population could be included without exceeding the 20% limit.

B. Application of Caps to Qualified Census Tract Determinations

In identifying Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. For Qualified Census Tracts, section 42(d)(5)(C)(ii)(II) of the Code specifies that the population of eligible census tracts within a metropolitan area cannot exceed 20% of the population of that metropolitan area. Similarly, for census tracts/BNAs located outside metropolitan areas, the population of eligible census tracts/BNAs cannot exceed 20% of the population of the non-metropolitan counties in a State.

In applying these caps, HUD established procedures to deal with two issues: (1) how to proceed when the next logical choice for inclusion causes the cumulative area population to exceed the cap, and (2) how to treat small overruns of the caps. The remainder of this section explains the procedures.

1. *Next choice causes cumulative population to exceed the cap.* In applying the 20% cap to Qualified Census Tracts, HUD did not attempt to break a borderline census tract into smaller areas. Instead HUD looked tract-by-tract down the ranking beyond the excluded tract to see if a smaller tract could be included without exceeding the cap. Section 42(d)(5)(C)(ii)(I) of the Code sets a simple test for eligibility for Qualified Census Tracts. If a tract's low income population exceeds 50% of its total population, then the tract is eligible unless it becomes necessary to eliminate the tract to satisfy the cap. There are many metropolitan areas and States in which the population of eligible areas falls short of 20%. When HUD had to eliminate tracts to satisfy the 20% cap, it was choosing among tracts that were otherwise eligible.
2. *Anomalous results.* For Qualified Census Tracts, HUD applied the caps strictly unless a strict application produced an anomalous result. Specifically, HUD stopped selecting areas when it was impossible to choose another area without exceeding the applicable cap. The only exception to this policy was when an excluded area contained either a large absolute population or a large percentage of the total population and its inclusion resulted in only a minor overrun of the cap. There were some cases where the inclusion of an area would result in a minimal overrun of the cap; but, in all of these cases, the exclusion of the area resulted in neither a large absolute loss of population nor a large short-fall below 20%. HUD believes the designation of these areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to really determine whether the 20% cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The

extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20% cap. In circumstances where a strict application of a 20% cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20% limit.

Future Designations

Qualified Census Tracts will not be redesignated until year 2000 census data become available unless further changes in metropolitan area definitions occur.

Effective Date

The revisions to the list of Qualified Census Tracts are effective for allocations of credit made after December 31, 1998. In the case of a building described in Internal Revenue Code section 42(h)(4)(B), the list is effective if the bonds are issued and the building is placed in service after December 31, 1998. The corrected designations of "Qualified Census Tracts" under section 42 of the Internal Revenue Code published May 1, 1995 (60 FR 21246) for the metropolitan areas and nonmetropolitan parts of States not listed in this Notice remain in effect. The list of Difficult Development Areas published October 21, 1997 (62 FR 54732) remains in effect. Effective dates with respect to the HUBZones program will be established separately by the Small Business Administration.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. Section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" as required by section 42 of the Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Qualified Census Tracts" as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The notice involves the designation of "Difficult Development Areas" as required by section 42 of the Internal Revenue Code, as amended, that designated areas are for use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Dated: June 18, 1998.

Andrew M. Cuomo
Secretary

